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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,466	10/30/2003	Gilberto Poli	377/9-1882	7435

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EXAMINER	
FIDEI, DAVID	

ART UNIT	PAPER NUMBER
3728	

DATE MAILED: 11/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/697,466	POLI, GILBERTO	
	Examiner	Art Unit	
	David T. Fidei	3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *30 September 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-5 and 7-10* is/are pending in the application.

4a) Of the above claim(s) *7-10* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-5* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Election/Restrictions

1. Claims 7-10 withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there currently being no allowable generic or linking claim. Election was made without traverse in the reply filed on May 11, 2005.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, line 4 "each layer is composed on a plurality of rows of rolls". A plurality is taken to be more than one. Claim 2 is not consistent with the scope of claim1 in the each layer is not composed of at least one row but "at least two" rows or rolls.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claim 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Riddell (Patent no. 4,773,541) in view of Sato et al (Patent no 5,560,538). Riddell discloses a package of rolls, the package including: a group of rolls 14 composed of at least three layers of rolls (a 3X5 matrix is shown in figure 4), situated one over another; a sheet wrapped in tubular form around the group of rolls for wrapping the group of rolls. Col. 2, lines 12-17 contemplates thermoplastic films. The difference between the claimed subject matter and Riddell resides in the longitudinal edges of said sheet overlapped and heat-welded, and with the wings of each head of the sheet being folded against the rolls and then stabilized by heat-welding

Sato et al discloses a wrapping sheet with overlapping portions heat welded as is well known to those skilled in the packaging art, e.g., see col. 16, lines 49-54. It would have been obvious to one of ordinary skill in the art to modify the package of Riddell by employing a sheet wrapped in tubular form with the longitudinal edges of said sheet overlapped and heat-welded, and with the wings of each head of the sheet being folded against the rolls and then stabilized by heat-welding as taught by Sato et al, as means of forming the wrapper of more economical plastic material.

As to the group of rolls composed of at least three vertical layers of rolls where Riddell shows two, such a difference pertains to the size or quantity of products supplied. Along with an appropriate sized package. It would have been an obvious matter of design choice to employ any reasonable number or vertical layers such as three, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955). Also, it has been held that where the only difference between the prior art device and the claimed device was a recitation of relative dimensions, the claimed device was not patentably distinct

from the prior art device, Gardner *v.* TED Systems, Inc., 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. Denied, 469 U.S. 830, 2325 USPQ 232 (1984), see M.P.E.P. 2144.04 (IV). It is also noted one skilled in the art would have been motivated to provide three vertical layers of rolls for the reason providing a greater supply of products.

As to claims 2-4, each layer has a plurality of rolls arranged horizontally.

7. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Dearwester (Patent no 4,886,167). The difference between the claimed subject matter and Riddell resides in the rolls being press squashed along a vertical axis.

Dearwester discloses that it is well known to press squashed rolls along a vertical axis. It would have been obvious to one of ordinary skill in the art to modify the rolls of Riddell by press squashed them along a vertical axis as taught by Dearwester, in order to form a more compact package that save space.

Response to Arguments

8. Applicant's arguments filed September 30, 2005 have been fully considered but they are not persuasive. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Sato et al generally relates to a wrapping film for articles as stated in the title. This is directly relevant and pertinent to the disclosure of Riddell which is also dealing with the problem of wrapping articles with a sheet material. While Riddell prefers Kraft paper, suitable packaging materials include paper, polyethylene films, orientated polypropylene films, etc., see col. 2, lines 15-17. Sato et al is dealing with similar films in col. 1, lines 23-24 and is also concerned with facilitating opening of such a wrapper. Accordingly, not only do the

references embody relevant concepts and pertinent features as would have been appreciated by one skilled in the art, but the problems they are addressing directly provide the motivation alleged to be lacking. Where incentive and motivation for the provision of a film sealed in the manner claimed is all but explicitly provided. Particularly in light of Riddell col. 2, lines 15-17. Sealing the edges of said sheet overlapped and heat-welded, and with the wings of each head of the sheet being folded against the rolls and then stabilized by heat-welding appears to be all but a necessity if one is to employ a heat-weldable material. If there is anything but an expectation of success in the proposed modification, it is nor reflected by anything in the present record.

9. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In the instant application nothing is relied upon from applicant's disclosure to support the conclusion of obviousness.

While the Examiner does not question that more problems are associated with the production of packages having more rolls than that shown by Riddell, particularly with the organization of the rolls as well as machines maintaining the roll configuration prior to wrapping, these considerations are of no consequence to the final package per se absent some type of structural distinction based upon the manner in which the product is made. The use of trays, or not, for aligning multiple rolls may be more pertinent to the method than the final product. In any event, the difference of 3 vertical layers, as opposed to 2 shown in the prior art, merely relates to the quantity one desires to package. Which does not represent an unobvious difference over the prior art for the aforementioned reasons.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the Examiner concerning the merits of the claims should be directed to David T. Fidei whose telephone number is (571) 272-4553. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

David T. Fidei
Primary Examiner
Art Unit 3728

dtf
August 8, 2005